

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

CARDELL LIBBETT, 08-B-3139,

Plaintiff,

v.

ORDER
09-CV-82A

SUPERINTENDENT OF ATTICA
CORRECTIONAL FACILITY,
SERGEANT COCHRAN and
R.N. HAWLEY,

Defendants.

This case was referred to Magistrate Judge H. Kenneth Schroeder, Jr. pursuant to 28 U.S.C. § 636(b)(1). By Decision and Order of the Magistrate Judge entered March 25, 2011, plaintiff was directed to show cause why this matter should not be dismissed as barred by the three year statute of limitations applicable to actions commenced pursuant to 42 U.S.C. sec 1983. In response to the Court's Order to Show Cause, plaintiff explains that he failed to file suit in federal court earlier because his attorney in a state court action involving this incident misled him as to the status of a settlement agreement and failed to file the federal court action.

On January 14, 2013, Magistrate Judge Schroeder filed a Report and Recommendation recommending that plaintiff's complaint be dismissed with prejudice as barred by the statute of limitations.

The Court has carefully reviewed the Report and Recommendation, the record in this case, and the pleadings and materials submitted by the parties, and no objections having been timely filed, it is hereby

ORDERED, that pursuant to 28 U.S.C. § 636(b)(1), and for the reasons set forth in Magistrate Judge Schroeder 's Report and Recommendation, plaintiff's complaint is dismissed with prejudice as barred by the statute of limitations.

The Clerk of Court shall take all steps necessary to close the case.

SO ORDERED.

s/ Richard J. Arcara

HONORABLE RICHARD J. ARCARA
UNITED STATES DISTRICT JUDGE

DATED: February 13, 2013